



COMMONWEALTH of VIRGINIA

*Office of the Attorney General
Richmond 23219*

Robert F. McDonnell
Attorney General

900 East Main Street
Richmond, Virginia 23219
804-786-2071
804-371-8947 TDD

MEMORANDUM

TO: **Brian McCormick**
Regulatory Coordinator
Virginia Department of Medical Assistance Services

FROM: **USHA KODURU**
Assistant Attorney General

DATE: **August 28, 2006**

SUBJECT: **Final Regulation to Extend Medical Coverage to Pregnant Women-FAMIS MOMS**

I have reviewed the attached final regulation that will create new state regulations and modify the State Plan for Medical Assistance Services relating to medical coverage for pregnant women who are over the age of 19 through the Family Access to Medical Insurance Security Plan and shall be known as FAMIS MOMS. You have asked the Office of the Attorney General to review and determine if the Department of Medical Assistance Services ("DMAS") has the legal authority to promulgate the final regulation and if the final regulation comport with state and federal law.

Based on that review, it is this Office's view that the DMAS has the authority, pursuant to Item 324 (L) of the 2005 Appropriations Act, to promulgate this regulation, subject to compliance with the provisions of Article 2 of the Administrative Process Act (APA) and has not exceeded that authority. This final regulation also incorporates a final exempt change mandated by the 2006 General Assembly in Item 301 D requiring that DMAS expand the FAMIS MOMS program to women with an annual family income that is less than or equal to 166 percent of the Federal Poverty Level. Because this expansion is required, this change is exempt from the Administrative Process Act pursuant to Virginia Code § 2.2-4006(4)(a).

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It appears that several changes to the final regulation are not changes with “substantial impact,” and, therefore do not necessitate an additional comment period. Those changes are merely technical in nature or clarify the language in the regulation. Please note that Virginia Code § 2.2-4013(B) requires that all changes to the proposed regulations be highlighted in the final regulations, and it appears that this requirement has been fulfilled. Also, pursuant to § 2.2 -4013(C), if the Governor finds that one or more changes with substantial impact have been made to the proposed regulation, he *may* (but is not required to) direct DMAS to provide additional thirty days to solicit additional public comment on the changes. In addition, Virginia Code § 2.2-4007(K) requires the agency to solicit additional public comment, *if* it receives requests from at least twenty-five persons for an opportunity to submit oral and written comments on the changes to the regulations and if one or more changes with substantial impact were made to the proposed regulation.

If you have any questions, please contact me at 786-4905.

Attachment

cc: Kim F. Piner, Esquire